

§ 46.4371-3

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(c) *Reinsurance.* Section 4371(3) imposes a tax upon each policy of reinsurance, certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of reinsurance is made, continued, or renewed, if issued:

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as reinsurer (unless the policy or other instrument is signed or countersigned by an officer or agent of the reinsurer in a State, Territory, or the District of Columbia in which such reinsurer is authorized to do business); and

(2) To any person against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts of the type described in section 4371 (1) or (2).

(d) *Exempt indemnity bonds.* The tax imposed by section 4371 does not apply to any indemnity bond described in section 4373(2).

§ 46.4371-3 Rate and computation of tax.

(a) *Rate of tax.* (1) The tax under section 4371(1) is imposed at the rate of 4 cents on each dollar, or fractional part thereof, of the premium payment.

(2) The tax under section 4371 (2) and (3) is imposed at the rate of 1 cent on each dollar, or fractional part thereof, of the premium payment.

(b) *Meaning of premium payment.* For purposes of this subpart, the term “premium payment” means the consideration paid for assuming and carrying the risk or obligation, and includes any additional assessment or charge paid under the contract, whether payable in one sum or installments.

§ 46.4371-4 Records required with respect to foreign insurance policies.

(a) Each person required under the provisions of § 46.4374-1 to remit the tax imposed by section 4371 shall keep or cause to be kept accurate records of all policies or other instruments subject to such tax upon which premiums have been paid. Such records must identify each such policy or other instrument in such a manner as to clearly establish the following: (1) The gross premium paid; (2) whether such policy or

other instrument is (i) a policy of casualty insurance or an indemnity bond subject to tax under section 4371(1), (ii) a policy of life, sickness, or accident insurance or an annuity contract subject to tax under section 4371(2), or (iii) a policy of reinsurance subject to tax under section 4371(3); (3) the identity of the insured (as defined in section 4372(d)); (4) the identity of the foreign insurer or reinsurer (as defined in section 4372(a)); and (5) the total premium charged and, if the premium is to be paid in installments, the amount and anniversary date of each such installment.

(b) The records required under the provisions of this section must be kept on file at the place of business or at some other convenient location, for a period of at least 3 years from the date any part of the tax became due or the date any part of the tax is paid, whichever is later, in such manner as to be readily accessible to authorized internal revenue officers or employees. The person having control or possession of a policy or other instrument subject to tax under section 4371 shall retain such policy or other instrument for at least 3 years from the date any part of the tax with respect to such policy was paid.

[T.D. 7023, 35 FR 1012, Jan. 24, 1970. Redesignated by T.D. 8328, 56 FR 189, Jan. 3, 1991, as amended by T.D. 8442, 57 FR 48186, Oct. 22, 1992]

§ 46.4374-1 Liability for tax.

(a) *In general.* Any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued, or sold, shall be liable for the tax imposed by section 4371. For purposes of this section, in the case of a reinsurance policy that is subject to the tax imposed by section 4371(3), other than assumption reinsurance, the insured person on the underlying insurance policy, the risk of which is covered in whole or in part by such reinsurance policy, shall not constitute a person for whose use or benefit the reinsurance policy is made, signed, issued, or sold.

(b) *When liability for tax attaches.* The liability for the tax imposed by section

4371 shall attach at the time the premium payment is transferred to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker. A person required to pay tax under this section may remit such tax before the time the tax attaches if he keeps records consistent with such practice.

(c) *Payment of tax.* The tax imposed by section 4371 shall be paid on the basis of a return by the person who makes payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. If the tax is not paid by the person who paid the premium, the tax imposed by section 4371 shall be paid on the basis of a return by any person who makes, signs, issues, or sells any of the documents or instruments subject to the tax imposed by section 4371, or for whose use or benefit such document or instrument is made, signed, issued, or sold.

(d) *Penalty for failure to pay tax.* Any person who fails to comply with the requirements of this section with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of tax. (See section 7270.)

(e) *Effective date.* This section is applicable for premiums paid on or after November 27, 2002.

[T.D. 9024, 67 FR 70846, Nov. 27, 2002]

Subpart C—Fees on Insured and Self-insured Health Plans

SOURCE: T.D. 9602, 77 FR 72728, Dec. 6, 2012, unless otherwise noted.

§ 46.4375-1 Fee on issuers of specified health insurance policies.

(a) *In general.* An issuer of a specified health insurance policy is liable for a fee imposed by section 4375 for policy years ending on or after October 1, 2012, and before October 1, 2019. Paragraph (b) of this section provides definitions that apply for purposes of section 4375 and this section. Paragraph (c) of this section provides rules for calculating the fee under section 4375. Paragraph (d) of this section provides the applica-

bility date. For rules relating to filing the required return and paying the fee, see §§ 40.6011(a)-1 and 40.6071(a)-1 of this chapter.

(b) *Definitions.* The following definitions apply for purposes of section 4375 and this section. See also § 46.4377-1 for additional definitions.

(1) *Specified health insurance policy—*

(i) *In general.* Except as provided in paragraph (b)(1)(ii) of this section and § 46.4377-1, *specified health insurance policy* means any accident and health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States (as defined in § 46.4377-1(a)(2)), including prepaid health coverage arrangements described in paragraph (b)(2) of this section. *Specified health insurance policy* also includes any policy that provides accident and health coverage to an active employee, former employee, or qualifying beneficiary, as continuation coverage required under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or similar continuation coverage under other Federal law or state law.

(ii) *Exceptions.* The term *specified health insurance policy* does not include—

(A) Any insurance policy if substantially all of its coverage is of excepted benefits described in section 9832(c);

(B) Any group policy issued to an employer where the facts and circumstances show that the group policy was designed and issued specifically to cover primarily employees who are working and residing outside of the United States (as defined in § 46.4377-1(a)(3));

(C) Any stop loss or indemnity reinsurance policy; or

(D) Any insurance policy to the extent it provides an employee assistance program, disease management program, or wellness program if the program does not provide significant benefits in the nature of medical care or treatment.

(iii) *Stop loss policy.* For purposes of paragraph (b)(1)(ii) of this section, *stop loss policy* means an insurance policy in which—

(A) The insurer that issues the policy to a person establishing or maintaining